

RESPONDING TO EMPLOYMENT-RELATED REQUESTS: SUBPOENAS, GARNISHMENTS, AND PERSONNEL FILES:

By Sydney E. Wright

I. RESPONDING TO MICHIGAN SUBPOENAS FOR EMPLOYEE RECORDS AND DEPOSITIONS

A. Purpose

1. Subpoenas allow a litigant to gain access to documents and records in order to uncover facts in a case.
2. A subpoena functions as a court order requiring someone to turn over certain documents.
3. If the individual or entity to whom the subpoena is directed fails to comply, the requesting party can seek help from the court to require a response.

B. Types

1. There are two types of subpoenas, being subpoenas for deposition and subpoenas for documents.
2. Subpoenas for deposition seek testimony under oath and can be issued to a company's representative (often the "records custodian"), or to an individual.
3. A subpoena for documents (often called a subpoena "duces tecum"), are used to obtain a broad range of materials, including hard copy files, audio and video recordings, and electronically stored data, for example.

C. What does a Michigan subpoena include?

1. The Michigan State Court Administrative Office ("SCAO") has published an approved form for deposition subpoenas and subpoenas duces tecum – **SCAO Form MC 11**.
2. On its face, the subpoena contains important information about the case, including the case caption, the party to whom the subpoena is issued, where the deposition will take place, the materials to be produced, time and place for production, a description of the materials demanded, and/or the knowledge area of the person to be deposed.
3. An attachment to the subpoena may itemize the materials or testimony sought in more detail. Employers should pay close attention to the details or "scope" of the request to avoid over-producing documents, as well as avoiding claims later on that responsive documents were improperly withheld.

D. Service requirements

1. Subpoena service requirements are found at MCR 2.105 and will vary depending on the type of recipient.
2. Generally, a subpoena must be properly served on the party or non-party to whom it is addressed. Notice of the subpoena must also be provided to other parties in the case to afford them the opportunity to object. The deponent may be entitled to a fee for copy costs and/or appearance.
3. Many states subscribe to the Uniform Interstate Depositions and Discovery Act (“UIDDA”), which provides simple procedures for courts in one state to issue subpoenas for compelling testimony and evidence from out-of-state parties. Michigan subscribes to the UIDDA. Out-of-state subpoenas that are “domesticated” by a Michigan court are administered under the Michigan court rules.

E. Responding to a subpoena

1. The deadline to respond to a subpoena for documents or to produce an individual for deposition must be at least 14 days from the date the subpoena is served. MCR 2.305(A)(3). Consider communicating with the requesting attorney to seek an extension, if needed.
2. Identify the materials sought by the requesting party. Communicate internally with your staff to understand what materials exist to ensure you understand the scope of documents that should be produced in response to the subpoena.
3. Consider referring the subpoena to your attorney if you are unsure of whether you should respond. Subpoenas that are too demanding, over-expansive, or seek irrelevant material may be objectionable.

F. Handling Personally Identifiable Information

1. Employers should remove all sensitive information from any documents produced.
2. Personally Identifiable Information (PII) includes: social security numbers, taxpayer identification numbers, names of minors, dates of birth, financial account numbers, home addresses, passport numbers, driver license numbers, medical information*
3. **Note:** PII should also be removed from personnel file productions, which are discussed later in the presentation.

G. Preserving electronically stored information

1. Recipients of a subpoena are required to preserve any Electronically Stored Information (ESI). ESI includes email folders, drafts, archives, voicemails, trash/recycle bins, sent items. ESI

includes information stored on devices located in-office and at home. If any of this data is at risk of being deleted, take immediate steps to ensure that does not occur.

2. You may also receive a litigation hold letter with the subpoena. Litigation hold letters advise a client (including all its employees) not to delete information that may be relevant to a lawsuit, including information that's been subpoenaed.
3. TIP: Do not delete, edit, or re-organize responsive company files or data upon receipt of a subpoena. If you are concerned about particular documents that may need to be withheld due to being confidential or proprietary, for example, seek advice from your attorney.

H. Be collaborative where you can

1. Communication with the requesting attorney can be crucial. You can often work with the requesting lawyer to agree on how and when materials will be produced, or to schedule a deposition. You may be able to save time and costs by arranging for documents to be produced electronically. Even depositions can be done more efficiently via video conference.
2. TIP: Any arrangements you make with the requesting attorney should be confirmed in writing.

I. Subpoenas in Action

1. Motion for Protective Order

- a. Scenario: You received a subpoena demanding that you produce confidential documents relating to a former employee that contain key trade secrets.
- b. Solution: Consult your attorney to discuss filing a motion for a protective order.
- c. A protective order can provide that discovery be limited or can set the terms of a production, including by avoiding having documents available in the public record, destroying documents at the close of litigation, and any other terms the parties agree to, or the Court sets.

2. Motions to Compel

- a. Scenario: You received a deposition subpoena of your company's records custodian, but the deposition date was not calendared and your records custodian did not appear. The deposition was scheduled to take place over a month ago. The requesting attorney has left a voicemail and follow-up email seeking to re-schedule the deposition, but you have yet to communicate or produce your records custodian.
- b. Possible Outcome: The requesting party files a motion to compel the deposition.

- c. The Court can issue an order requiring the subpoenaed entity to produce the documents or appear for the deposition as subpoenaed, and in some instances you may be required to pay the requesting party's costs in bringing the motion.
- 3. Motions to Quash or Modify
 - a. Scenario: Your company is involved in a corporate dispute and has been served with a subpoena demanding that the CEO produce personal and embarrassing emails.
 - b. Solution: Consult your attorney to discuss filing a motion to quash or modify the subpoena.
 - c. The Court can issue an order which states that your client does not need to respond to an "unreasonable or oppressive" subpoena, or which limits the production that's required to specified subjects or documents.
- 4. Practice Pointers
 - a. Keep an Eye on the Details
 - i. Producing Documents - Ask for what the requesting party wants, and make sure you are only producing what they've asked for. Review the list of requested materials with the requesting attorney. Specify time periods to avoid over-producing documents.
 - ii. Appearing for Deposition - Give yourself time to review materials before you get into a deposition. An earlier subpoena for documents in advance of a deposition subpoena can help you be prepared for an effective deposition.

II. PROCESSING MICHIGAN WAGE GARNISHMENTS

- A. What is a garnishment? - Generally, a garnishment is a court-approved attempt by a creditor to collect on a debt. Employers are required to withhold wages from an employee's paycheck and transmit those wages to another source designated by the creditor. Wage garnishments are time-sensitive, and failure to process the garnishment within the allotted time frame may lead to penalties.
- B. Situations subject to garnishment include: child support, bankruptcy, tax levy, defaulted student loans, and consumer debts. Regardless of the type of garnishment, employees have legal rights around what an employer can and cannot do related to their income.
- C. Assessing new garnishments –
 - 1. Is the garnishment valid?
 - a. Served 182 days from the date it was issued

- b. Includes two copies of the garnishment writ (**SCAO form MC 12**)
 - c. Includes all pages of the Garnishee Disclosure (**SCAO form MC 14**)
 - d. Includes \$35 fee for administration
 - e. Correctly identifies the employee by their full legal name and provides enough additional information to properly identify the employee
2. MCL 600.4011(10) provides that “[a] writ of garnishment is not effective if both of the following conditions are met:
 - a. The plaintiff fails to provide the garnishee with information sufficient for the garnishee to identify the defendant.
 - b. The garnishee provides the court with written notice of the insufficiency described in subdivision (a).”
 3. TIP: The written notice required under MCL 600.4011(10) can be accomplished with the Garnishee Disclosure form (**SCAO form MC 14**).
- D. Was the garnishment properly served?
1. The creditor must serve the garnishment in the manner provided in MCR 2.105. An improperly served garnishment is specifically invalid and improper service cannot be waived. See MCL 600.4012(10)(b)(ii).
 2. Upon being properly served with a valid garnishment, employers must provide a copy of the garnishment to the defendant within 7 days of being served. This can be accomplished by mailing via first class mail. MCR 3.101(F)(2). Employers must also file a disclosure within 14 days of being served, regardless of whether the garnishment is valid. See **SCAO form MC14** – “Garnishee Disclosures” Form. Wait 28 days before transmitting withheld funds to the source designated by the creditor or as directed by the court.
- E. Maintaining garnishment records
1. “In the case of earnings, the garnishee shall maintain a record of all payment calculations and shall make such information available for review by the plaintiff, the defendant, or the court, upon request.” MCR 3.101(J)(5).
 2. Employers should track every step of the garnishment process, including the date the garnishment is received, the date any documents are received or sent during administration process, and the date any action is taken on the garnishment.
 3. Employers should also maintain copies of any documents received. Consistent record keeping is invaluable if legal trouble arises.

F. Withholdings

1. Generally, withholding from the employee's wages begins on the next full pay period. If the employee is paid on a monthly basis, withholding begins either immediately, if the garnishment is served within the first 14 days of the monthly pay period, or with the next monthly pay period, if the garnishment is served on or after the 15th day of the monthly pay period. MCR 3.101(I)(2).
2. However, do not remit withheld funds to the court or creditor until after 28 days have passed from the date of service of the garnishment. MCR 3.101(J)(1).

G. Penalties for failure to respond or comply

1. Failure to respond to a garnishment or do any other act required by the court subjects an employer to a judgment for the full amount of the garnishment.

H. Dissolving a garnishment

1. An employer may stop withholding when the full amount of the judgment listed on the garnishment has been withheld; or the creditor provides a release of garnishment, which must be provided by the creditor within 21 days after the judgment is satisfied. See **SCAO form MC 50**; MCL 600.4012(5)(b).
2. Note: Michigan periodic/wage garnishments remain in place until a final statement is filed.

I. Final statements

1. Michigan periodic/wage garnishments remain in place until a final statement is filed. An employer must provide a final statement within 14 days of the judgment being satisfied or the employer no longer being obligated to make periodic payments (e.g., employee has been terminated).
2. See **SCAO Form MC48** – “Final Statement on Garnishment of Periodic Payments”; MCR 3.101(J)(6).

J. Practice tips

1. Establish procedures for handling subpoenas across your facilities.
2. Contact the court that issued the garnishment to get information about the case and filing information. Some district courts allow for electronic filing or “e-filing.”
3. Call the attorney of the creditor that requested the garnishment.
4. Alert your employee in writing when you receive a garnishment. For example, provide a letter detailing the specifics of the wage garnishment order, the amount to be taken from each payment, and the length of time the wages will be garnished.

5. Notify your HR/payroll department so they can start the wage garnishment process and ensure that payments are sent to the appropriate agency or creditor.

III. **MAINTAINING PERSONNEL FILES AND RESPONDING TO FILE REQUESTS UNDER MICHIGAN’S BULLARD-PLAWECKI EMPLOYEE RIGHT TO KNOW ACT**

- A. **Note:** This presentation covers Michigan’s statute on personnel files, only. Other states may have their own unique laws on personnel files and employers who operate in multiple states will want to be aware of the nuances.
- B. What is a “personnel record”?
 1. “...a record kept by the employer that identifies the employee, to the extent that the record is used or has been used, or may affect, or be used relative to that employee’s qualifications for employment, promotion, transfer, additional compensation, or disciplinary action.” Michigan’s Bullard-Plawecki Employee Right-to-Know Act (“B-PERKA”), MCL § 423.501(2)(c)
- C. B-PERKA
 1. Allows employees to review, copy and correct personnel record information
 2. Applies to “records,” including digital files that are stored electronically
 3. Applies to employers with 4 or more employees
 4. Requires a written request to view or obtain a copy of a personnel file
 5. Employees can review or obtain personnel records at reasonable intervals, generally not more than twice a year
- D. What to include in personnel files
 1. Most pre-employment submissions, such as employment applications, resumes, and letters of reference
 2. Performance evaluations, such as annual/mid-year reviews, and employee self-reviews
 3. Disciplinary records, such as counseling/corrective action notices/write-ups, and emails if used for documentation purposes, like documenting a verbal warning
 4. Records relating to job status, such as job classification, changes to job classification (promotion, demotion, or lateral move)
 5. Records relating to wage status, such as current wages/salary, changes to wage/salary status, I-9 or W-4 forms. NOTE: this category does NOT include payroll information or copies of paystubs

6. Other performance management records, such as trainings, certifications
- E. What not to include in a personnel file
1. Medical documents, including medical records of employee or employee's dependents
 - a. Medical leave forms and supporting documents, work-related injury or illness forms and supporting documents, disability-related documentation, including requests for accommodation
 2. Personal information that relates to a person other than the employee, if it would invade the other person's privacy
 3. Staff planning materials that include information about more than one employee
 4. Employee references that reveal the identity of the maker
 5. Materials related to a formal grievance investigation
 6. Information relating to an investigation of possible criminal activity by the employee
 7. Education records maintained by an educational institution (these are different from student employment records)
 8. Employers may not maintain records about an employee's non-job related personal associations, political activities, publications or communications of non-employment activities without employee's authorization.
- F. Failing to properly maintain a personnel file
1. An employer will be prohibited from using the improperly excluded documents in a judicial or quasi-judicial proceeding, such as a lawsuit, arbitration, discrimination charge, or other legal challenge. An employer may need to use all of the documents in defense of the employee's claims.
- G. Procedure for accessing a personnel file
1. B-PERKA outlines a step-by-step process for reviewing or obtaining a copy of a personnel file. Generally, a written request is submitted to employer and an appointment is scheduled for the employee to review the personnel file. The review is to take place in a location reasonably near the employee's place of employment and during normal office hours. After the employee reviews the records, a request for a copy of the documents can also be made. Employees may also request that an employer send a copy of the personnel file if the employee is unable to review the file. MCL § 423.503 & MCL § 423.504.
- H. Disclosures to Third Parties

1. An employer or former employer cannot divulge a disciplinary report, letter of reprimand or other disciplinary action to a third party without written notice to the employee.
 2. Written notice must be provided by first class mail to the employee's last known address and mailed on or before the day the information is disclosed from the personnel file. MCL 423.506.
 3. Exceptions:
 - a. The employee has specifically waived written notice as part of a written, signed employment application with another employer.
 - b. The disclosure is ordered in a legal action or arbitration to a party in that legal action or arbitration.
 - c. Information is requested by a government agency as a result of a claim or complaint by an employee.
- I. Organizing personnel files
1. File content can be grouped by subject matter. An example includes separate subfolders for documents that are performance-related, compensation, benefits, hiring documents, and trainings. Storing related documents together makes it easier to create a timeline of actions within each category.

SCAO MC 11

SUBPOENA

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE	SUBPOENA Order to Appear and/or Produce	CASE NO.
---	--	-----------------

Court address Court telephone no.

Police Report No. (if applicable):

Plaintiff(s)/Petitioner(s) <input type="checkbox"/> People of the State of Michigan <input type="checkbox"/> _____ _____ <input type="checkbox"/> Civil <input type="checkbox"/> Criminal	v	Defendant(s)/Respondent(s) _____ _____ Charge _____
<input type="checkbox"/> Probate In the matter of _____		

In the Name of the People of the State of Michigan. TO:

If you require special accommodations to use the court because of disabilities, please contact the court immediately to make arrangements.

YOU ARE ORDERED TO:

<input type="checkbox"/> 1. Appear personally at the time and place stated below: You may be required to appear from time to time and day to day until excused.		
<input type="checkbox"/> The court address above <input type="checkbox"/> Other:		
Day	Date	Time

- 2. Testify at trial / examination / hearing.
- 3. Produce/permit inspection or copying of the following items: _____

- 4. Testify as to your assets, and bring with you the items listed in line 3 above.
- 5. Testify at deposition.
- 6. Abide by the attached prohibition against transferring or disposing of property. (MCL 600.6104(2), 600.6116, or 600.6119.)
- 7. Other: _____

<input type="checkbox"/> 8. Person requesting subpoena	Telephone no.
Address	
City	State
Zip	

NOTE: If requesting a debtor's examination under MCL 600.6110, or an injunction under item 6, this subpoena must be issued by a judge. For a debtor examination, the affidavit of debtor examination on the other side of this form must also be completed. Debtor's assets can also be discovered through MCR 2.305 without the need for an affidavit of debtor examination or issuance of this subpoena by a judge.



FAILURE TO OBEY THE COMMANDS OF THE SUBPOENA OR TO APPEAR AT THE STATED TIME AND PLACE MAY SUBJECT YOU TO PENALTY FOR CONTEMPT OF COURT.

Court use only	
<input type="checkbox"/> Served	<input type="checkbox"/> Not served

Date _____ Judge/Clerk/Attorney _____ Bar no. _____

SUBPOENA

Case No. _____

PROOF OF SERVICE

TO PROCESS SERVER: You must make and file your return with the court clerk. If you are unable to complete service, you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE

OFFICER CERTIFICATE

OR

AFFIDAVIT OF PROCESS SERVER

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party [MCR 2.104(A)(2)], and that: (notarization not required)

Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)

I served a copy of the subpoena, together with _____ (including any required fees) by Attachment

personal service registered or certified mail (copy of return receipt attached) on:

Name(s)	Complete address(es) of service	Day, date, time

I have personally attempted to serve the subpoena and required fees, if any, together with _____ on the following person(s) and have been unable to complete service. Attachment

Name(s)	Complete address(es) of service	Day, date, time

Service fee	Miles traveled	Fee	
\$		\$	
Incorrect address fee	Miles traveled	Fee	TOTAL FEE
\$		\$	\$

Signature _____

Name (type or print) _____

Title _____

Subscribed and sworn to before me on _____, _____ County, Michigan.
Date

My commission expires: _____ Signature: _____
Date Deputy court clerk/Notary public

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the subpoena and required fees, if any, together with _____ Attachment

_____ on _____
Day, date, time

Signature _____ on behalf of _____

AFFIDAVIT FOR JUDGMENT DEBTOR EXAMINATION

I request that the court issue a subpoena that orders the party named on this form to be examined under oath before a judge concerning the money or property of: _____ for the following reasons: _____

Signature _____

Subscribed and sworn to before me on _____, _____ County, Michigan.
Date

My commission expires: _____ Signature: _____
Date Deputy court clerk/Notary public

Notary public, State of Michigan, County of _____

SCAO MC 12

**REQUEST AND WRIT FOR GARNISHMENT
(PERIODIC)**

Approved, SCAO

<ul style="list-style-type: none"> ● STATE OF MICHIGAN _____ JUDICIAL DISTRICT _____ JUDICIAL CIRCUIT 	REQUEST AND WRIT FOR GARNISHMENT (PERIODIC)	<ul style="list-style-type: none"> ● CASE NO.
--	--	--

Court address ● Zip code Court telephone no.

Plaintiff's name and address (judgment creditor)
Plaintiff's attorney, bar no., and address
Telephone no.

v

Defendant's name and address (judgment debtor)	
Social security no.	Employee ID or account no.
Garnishee name and address	

REQUEST See separate instructions.

1. Plaintiff received judgment against defendant for \$ _____ on _____ .
2. The total amount of judgment interest accrued to date is \$ _____. The total amount of postjudgment costs accrued to date is \$ _____. The total amount of postjudgment payments made and credits to date is \$ _____. **The amount of the unsatisfied judgment now due (including interest and costs) is ● \$ _____ .**
3. Plaintiff knows or with good reason believes the garnishee is indebted to or possesses or controls property belonging to defendant.
4. **Plaintiff requests** a writ of periodic garnishment be paid to plaintiff, plaintiff's attorney, the court, and mailed to plaintiff. plaintiff's attorney. the court.

I declare under the penalties of perjury that this request has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Date

Plaintiff/Agent/Attorney signature

WRIT OF GARNISHMENT IT IS ORDERED:

TO THE PLAINTIFF: Have all copies of the Garnishee Disclosure (form MC 14), two copies of this writ, and the disclosure fee (\$6 if the State of Michigan is the garnishee; \$35 for all others) served on the garnishee within 182 days from the date of issue. If not properly served, the writ of garnishment is invalid. After receiving your first payment under the garnishment, provide the garnishee and defendant a statement of the balance remaining on the judgment, including interest and costs, at least once every 6 months. Within 21 days after the judgment has been paid, including all interest and costs, provide the garnishee and defendant a garnishment release (form MC 50).

TO THE DEFENDANT: See separate instructions. You have 14 days after this writ is mailed or delivered to you to file objections with the court. If you do not file objections within this time, periodic payments (money) owed to you by the garnishee may be withheld and paid directly to the plaintiff until the judgment is satisfied.

TO THE GARNISHEE:

1. Within 7 days after you are served with this writ, deliver a copy of this writ to the defendant in person or mail a copy to his or her last-known address by first-class mail.
2. Within 14 days after you are served with this writ, deliver or mail copies of your completed Garnishee Disclosure (form MC14) to the court, plaintiff/attorney, and defendant. A default may be entered against you for failure to disclose.
3. Do not pay any obligations to the defendant unless allowed by statute or court rule.
4. If indebted to the defendant, withholding must begin according to court rule and continue until the judgment is satisfied. Unless notified that an objection has been filed, begin forwarding withheld payments 28 days after you are served with this writ.
5. Make all payments withheld under this writ payable and mailed as specified in the request.
6. Within 14 days after the judgment is satisfied or you are no longer obligated to make periodic payments to the defendant, file a final statement of the total amount paid on this writ with the court and mail or deliver copies to the plaintiff/attorney and defendant.

Date of issue

Date of deadline for service
(182 days from date of issue)

Clerk of the court/Deputy

Approved, SCAO

• STATE OF MICHIGAN _____ JUDICIAL DISTRICT _____ JUDICIAL CIRCUIT	REQUEST AND WRIT FOR GARNISHMENT (PERIODIC)	• CASE NO.
---	--	-------------------

Court address	• Zip code	Court telephone no.
---------------	------------	---------------------

Plaintiff's name and address (judgment creditor)

Plaintiff's attorney, bar no., and address

Telephone no.

v

Defendant's name and address (judgment debtor)

Employee ID or account no.

Garnishee name and address

REQUEST See separate instructions.

1. Plaintiff received judgment against defendant for \$ _____ on _____.
2. The total amount of judgment interest accrued to date is \$ _____. The total amount of postjudgment costs accrued to date is \$ _____. The total amount of postjudgment payments made and credits to date is \$ _____. **The amount of the unsatisfied judgment now due (including interest and costs) is • \$ _____.**
3. Plaintiff knows or with good reason believes the garnishee is indebted to or possesses or controls property belonging to defendant.
4. **Plaintiff requests** a writ of periodic garnishment be paid to plaintiff, plaintiff's attorney, the court, and mailed to plaintiff. plaintiff's attorney. the court.

I declare under the penalties of perjury that this request has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Date _____	Plaintiff/Agent/Attorney signature _____
------------	--

WRIT OF GARNISHMENT IT IS ORDERED:

TO THE PLAINTIFF: Have all copies of the Garnishee Disclosure (form MC 14), two copies of this writ, and the disclosure fee (\$6 if the State of Michigan is the garnishee; \$35 for all others) served on the garnishee within 182 days from the date of issue. If not properly served, the writ of garnishment is invalid. After receiving your first payment under the garnishment, provide the garnishee and defendant a statement of the balance remaining on the judgment, including interest and costs, at least once every 6 months. Within 21 days after the judgment has been paid, including all interest and costs, provide the garnishee and defendant a garnishment release (form MC 50).

TO THE DEFENDANT: See separate instructions. You have 14 days after this writ is mailed or delivered to you to file objections with the court. If you do not file objections within this time, periodic payments (money) owed to you by the garnishee may be withheld and paid directly to the plaintiff until the judgment is satisfied.

- TO THE GARNISHEE:**
1. Within 7 days after you are served with this writ, deliver a copy of this writ to the defendant in person or mail a copy to his or her last-known address by first-class mail.
 2. Within 14 days after you are served with this writ, deliver or mail copies of your completed Garnishee Disclosure (form MC14) to the court, plaintiff/attorney, and defendant. A default may be entered against you for failure to disclose.
 3. Do not pay any obligations to the defendant unless allowed by statute or court rule.
 4. If indebted to the defendant, withholding must begin according to court rule and continue until the judgment is satisfied. Unless notified that an objection has been filed, begin forwarding withheld payments 28 days after you are served with this writ.
 5. Make all payments withheld under this writ payable and mailed as specified in the request.
 6. Within 14 days after the judgment is satisfied or you are no longer obligated to make periodic payments to the defendant, file a final statement of the total amount paid on this writ with the court and mail or deliver copies to the plaintiff/attorney and defendant.

Date of issue _____	Date of deadline for service (182 days from date of issue)	Clerk of the court/Deputy _____
---------------------	---	---------------------------------

INSTRUCTIONS

Definitions

- A periodic garnishment lets the plaintiff (creditor) take money from a source that pays you on a regular basis such as your earnings or income from rental properties.
- A "garnishee" is a person who has control over some or all of the money that is paid to the defendant. For example, an employer could be a garnishee.
- Periodic payments are payments made by the garnishee to the defendant on a regular basis. These payments could be paychecks, rent payments, land contract payments, or other contract payments.

Instructions for the Plaintiff for Item 2:

If a civil judgment does not include judgment interest in the "total judgment" field, the interest amount reported in item 2 should be accrued from the date the complaint was filed.

If a civil judgment includes judgment interest in the "total judgment" field (as in the forms in use before the 5/07 revisions), the interest amount reported in item 2 should not include any postfiling interest already included in the judgment.

Instructions for the Defendant:

1. This writ has been issued because there is a judgment against you that you have not paid. In order to collect on this judgment, income to be paid to you may be garnished.
2. You may object to this garnishment if:
 - a. your income is exempt from garnishment by law (see examples below),
 - b. you have a pending bankruptcy proceeding,
 - c. the maximum withheld exceeds the amount allowed by law,
 - d. you have an installment payment order,
 - e. you have paid the judgment in full,
 - f. the garnishment was not properly issued or is otherwise invalid,
 - g. you believe the balance on the statement the creditor sent to you is wrong.
3. Certain income is exempt from garnishment and the law gives you the right to claim this income as exempt to prevent it from being used to collect on this judgment. You may want to contact your lawyer or legal aid agency for further assistance.
4. You may send the plaintiff a written request to review postjudgment costs and fees listed in item 2 of the request. Within 28 days after receiving your request, the plaintiff must send an itemized list of the postjudgment costs and fees to you and the court. Within 28 days after receiving the itemized list, you may file a motion with the court to review the postjudgment costs and fees if you believe they are wrong. If the judge rules in your favor, the judge may order the motion fee to be deducted from the judgment balance.
5. For more information on garnishments and debt collection, please visit MichiganLegalHelp.org. If you have a smartphone, scan the code to the right for help.



EXAMPLES OF INCOME EXEMPT FROM GARNISHMENT

The following are examples of **some** types of income that are exempt from garnishment and the citations where each type may be found in the law. **Please note that this is not intended as a complete list. You may want to contact your lawyer or legal aid agency for further assistance.**

- Individual Retirement Account (IRA) - [MCL 600.6023(1)(k)]
- Social Security Benefits - [42 USC, Section 407]
- Supplemental Security Income Benefits (SSI) - [42 USC, Section 1383(d)]
- Aid to Families with Dependent Children (AFDC) - [MCL 400.63]
- General Assistance Benefits (GA) - [MCL 400.63]
- Unemployment Compensation Benefits - [MCL 421.30]
- Veterans Assistance Benefits - [38 USC, Section 3101]
- Workers' Compensation Benefits - [MCL 418.821]
- Cash value or proceeds of life insurance or annuity, payable to the spouse or children of the insured - [MCL 500.2207(1)]
- Income benefits under the Michigan Civil Service Act - [MCL 38.40]
- Income benefits under the Michigan Retirement Act - [MCL 421.30]
- U.S. Civil Service Retirement Benefits - [5 USC, Section 8346]

PROOF OF SERVICE

REQUEST AND WRIT FOR GARNISHMENT (PERIODIC)

Case No. _____

TO PROCESS SERVER: You must serve the garnishee with two copies of the request and writ of garnishment, a disclosure form, and the applicable fee, and file proof of service with the court clerk as directed by the plaintiff. If you are unable to complete service, you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE

OFFICER CERTIFICATE

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party [MCR 2.104(A)(2)], and that: (notarization not required)

OR

AFFIDAVIT OF PROCESS SERVER

Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)

I served two copies of the request and writ of garnishment, a disclosure form, and the applicable fee by:
 personal service registered or certified mail (copy of return receipt attached) on:

Garnishee name	Complete address of service	Day, date, time

I have personally attempted to serve the writ of garnishment, a disclosure form, and the applicable fee on the garnishee and have been unable to complete service.

Garnishee name	Complete address of service	Day, date, time

I declare under the penalties of perjury that this certificate has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee	
\$		\$	
Incorrect address fee	Miles traveled	Fee	TOTAL FEE
\$		\$	\$

Signature

Name (type or print)

Title

Subscribed and sworn to before me on _____
Date

Deputy clerk/Notary public signature

My commission expires: _____
Date

Name (type or print)

Notary public, State of Michigan, County of _____ . Acting in the County of _____ .

This notarial act was performed using an electronic notarization system or a remote electronic notarization platform

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received two copies of the request and writ of garnishment, a disclosure form, and the applicable fee on

Day, date, time

Signature on behalf of _____

SCAO MC 14

GARNISHEE DISCLOSURE

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY	GARNISHEE DISCLOSURE	CASE NO. and JUDGE
--	-----------------------------	---------------------------

Court address _____ Court telephone no. _____

Plaintiff's name, address, and telephone no. (judgment creditor)
Plaintiff's attorney, bar no., address, and telephone no.

v

Defendant's name, address, and telephone no. (judgment debtor)
Garnishee name and address

SEE INSTRUCTIONS

1. This disclosure is for a writ of garnishment issued on _____ and received by garnishee on _____ .
 - a. The garnishee mailed or delivered a copy of the writ of garnishment to the defendant on _____ .
 - b. The garnishee was unable to mail or deliver a copy of the writ of garnishment to the defendant.
 - c. The garnishee will not withhold payments under the writ of garnishment. The writ of garnishment was served after the deadline date for service and the writ is invalid.

2. At the time of service of the writ:

Nonperiodic Garnishments

a. The garnishee is not indebted to the defendant for any amount and does not possess or control the defendant's property, money, etc. Reason: _____

b. The garnishee is indebted to the defendant for nonperiodic payments as follows:

Description of property, money, negotiable instruments, etc. under garnishee's control	Type of account, if applicable

The amount to be withheld is \$ _____ and does not exceed the amount stated in item 2 of the writ.

c. Withholding is exempt because _____
State the exemption and legal authority

Periodic Garnishments

d. The garnishee is not obligated to pay the defendant during the period of the writ.

Reason: not employed. other _____

2. (continued)

e. The garnishee is obligated to pay the defendant during the period of the writ.

Payments are for earnings. nonearnings _____
Specify nature of payment (see instructions on next page)

Payments are made weekly. biweekly. semimonthly. monthly. other: _____
frequency of payment

A higher priority writ/order is is not currently in effect. If a higher priority writ/order is in effect, complete the following.

Name of court that issued higher priority writ/order Case number Date issued Date served

Withholding under this writ

will begin immediately if sufficient funds are available.

will not begin immediately because defendant is laid off. sick. on leave. other: _____
specify

I declare under the penalties of perjury that this disclosure has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Date

Garnishee/Agent/Attorney signature

CERTIFICATE OF MAILING

I certify that:

on _____ I mailed or personally delivered the original of this disclosure to the court.

on _____ I mailed or personally delivered a copy of this disclosure to the plaintiff/attorney.

on _____ I mailed or personally delivered a copy of this disclosure to the defendant.

I declare under the penalties of perjury that this certificate of mailing has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Date

Garnishee/Agent/Attorney signature

DO NOT Include Your Payment With This Disclosure. See item 3 of How to Fill Out Garnishee Disclosure Form.

GARNISHEE INSTRUCTIONS

Definitions

- A garnishment is a court order allowing the plaintiff (creditor) to take part or all of money owed to the defendant to pay for a judgment. You have been identified as a “garnishee,” a person who has control over some or all of the money that is paid to the defendant.
- Periodic payments are payments you make to the defendant on a regular basis. These payments could be paychecks, rent payments, land contract payments, or other contract payments.
- Nonperiodic payments include bank accounts, other property, money, goods, chattels, credits, negotiable instruments or effects, or earnings in the form of bonuses that are not paid to the principal defendant on a periodic basis. The rest of these instructions do not apply to garnishment of property, which needs to be sold before it can be applied to the judgment.

Responsibility to Disclose: Within 14 days after being served with the writ of garnishment, you must deliver or mail copies of this completed disclosure to the court, plaintiff’s attorney (or plaintiff, if no attorney), and the defendant. This applies even if you are not indebted or not obligated to make periodic payments to the defendant. No further disclosures are required.

Withholding Instructions: As the garnishee, you are being court ordered to withhold all or part of the money you owe the defendant to pay the plaintiff’s judgment. You are required to withhold money until the plaintiff’s judgment is satisfied or the court orders otherwise. If you do not do this, a judgment may be entered against you.

1. Determine when funds should be withheld.

- a. If item 2b is checked, funds or other property available at the time of service of the writ must be withheld from the defendant from the time of this disclosure.
- b. If item 2e is checked, funds must be withheld for each period you are indebted to the defendant. For example, if the defendant is your employee and he or she is paid weekly, you would withhold weekly.

Determine the date withholding will begin as follows.

- 1) For garnishees with weekly, biweekly, or semimonthly pay periods, withholding begins with the first full pay period after the writ was served.
- 2) For garnishees on a monthly pay period.
 - if the writ is served on the garnishee within the first 14 days of the pay period, withholding begins on the date the writ was served.
 - if the writ is served on or after the 15th day of the pay period, withholding begins on the next full pay period after the writ was served.

2. Priority Writs or Orders and Multiple Writs (for periodic garnishments only):

Garnishments with a higher priority than this garnishment of periodic payments are

- orders of bankruptcy court.
 - orders for past due federal or state taxes.
 - income withholding for support of any person.
 - other general garnishments served before this writ.
- a. If a higher priority writ/order is currently in effect and withholding under this writ is not appropriate at this time, you must keep this writ until (1) the higher priority writ/order has been satisfied or is otherwise not applicable, (2) the defendant’s wages are sufficient for multiple writs, or (3) other circumstances change, which make funds available. Then, you must determine whether withholding can begin under this writ.
 - b. If a higher priority writ/order is served on you while this writ is in effect and there is not enough money available for multiple writs, you must suspend withholding under this writ and inform the plaintiff of that fact.
 - c. The plaintiff may not file another writ of garnishment of periodic payments for the same defendant, garnishee, and judgment while the existing writ is pending.

3. Determine the amount to be withheld. The amount withheld cannot exceed the amount of the balance of the judgment specified in item 2 of the request. For periodic garnishment of earnings only, a calculation sheet (the last sheet of this multipart form) is provided to determine the amount to be withheld. You do not need to use this calculation sheet, but if you do, you are not required to file it with the court or provide it to the defendant and plaintiff. However, a record of payment calculations must be maintained and made available for review by the plaintiff, defendant, or court upon request.

Payment Instructions: Determine when disclosed amounts may be released. Funds available under this writ of garnishment may not be released to the plaintiff or court until 28 days after you were served with the writ. After 28 days, funds must be paid as ordered in this writ unless otherwise notified by the court.

For periodic garnishments only. After 28 days from the date of the service of the writ on the garnishee, the garnishee shall transmit all withheld funds to the plaintiff or the court as directed by the court unless notified that objections have been filed. Every time a periodic payment is withheld, the garnishee must provide the plaintiff, defendant (and the court if funds are deposited with the court) with the case name, case number, date of withholding, amount withheld, and the balance due on the writ. At least once every six months, the creditor must provide a statement of the balance remaining on the judgment, including interest and costs. The garnishee should rely on this statement to determine when the judgment is satisfied.

Final Statement Instructions: A final statement of withholding is required for periodic garnishments. Within 14 days after the garnishee is no longer obligated to make periodic payments or the judgment is satisfied, the garnishee must file with the court and mail or deliver to the plaintiff and defendant a final statement of the total amount paid on the writ. The statement must include the names of the parties, the court in which the case is pending, the case number, the date of the statement, and the total amount withheld. The “Final Statement on Garnishment of Periodic Payments” form (Form MC 48) can be used for this.

HOW TO FILL OUT THE GARNISHEE DISCLOSURE FORM

1. Determine whether you are obligated to make periodic payments to the defendant.
 2. Write in the date the garnishment was issued (found in the lower left-hand corner of the Request and Writ of Garnishment) and the date you received the Request and Writ for Garnishment and Garnishee Disclosure forms on line 1 of the Garnishee Disclosure.
 - Determine if the writ is valid. The plaintiff is required to serve the Request and Writ for Garnishment within 182 days from the date it was issued. If the Request and Writ for Garnishment was not served within this time, it is invalid. If it is invalid, check box 1c. Date and sign the form and follow the instructions in item 3 below. If the writ is valid, continue on.
 - If you don't know the defendant or are not obligated to make payments to him or her, check boxes 1b and 2d. Then check the box that describes the reason you are not obligated. If you check "other," write out the reason. Date and sign the form and follow the instructions in item 3 below.
 - If you know the defendant and are obligated to make payments to him or her, you must mail or deliver a copy of the Request and Writ for Garnishment to the defendant. After mailing or delivering it to the defendant, check box 1a and write in the date you mailed or delivered it. Follow the instructions in item 2 below. The term "obligated to pay" includes employees who may not necessarily be receiving a paycheck at the time. For example, employees may be sick, laid off, or on leave when this writ was issued, but they are still your employees and will eventually be back to work.
 3. Check box 2e and complete the information in item 2e as explained below.
 - Check either the box "earnings" or "nonearnings" so the plaintiff knows what kind of payments you make to the defendant. If you check "nonearnings," write in the kind of payments (for example, if you make rent payments, write that on the line after the "nonearnings" box).
 - Check the box that describes how often you make the payments to the defendant. If you check the "other" box, write on the line after that box how often you make the payments.
 - Check whether or not you are already garnishing money from the defendant (a higher priority writ/order). If you check the box that a higher priority writ/order is in effect, copy from those papers the name of the court that issued that writ, the case number of that writ, the date that writ was issued, and the date it was served on you.
 - If the defendant is currently due to receive payments from you from the date the writ was issued, check the box that says withholding "will begin immediately if sufficient funds are available." If the defendant is not due to receive a payment, check the box that says "will not begin immediately." Then check the box that explains why payment is not due; for example, defendant is laid off, sick, or on leave of absence.
- Date and sign the form and follow the instructions in item 4.
4. Fill in the dates that you will be mailing or delivering the copies of this form. Date and sign this part of the form. Separate the four copies of the form. Mail the original to the court and one copy to the plaintiff. You can either mail a copy to the defendant or hand deliver it to him or her. Keep one copy for your records.

See next page for calculation sheet.

You do not need to use this calculation sheet. If you do, it does not need to be filed with the court or provided to the defendant and plaintiff. However, you must maintain some type of record of your payment calculations and make it available for review by the plaintiff, defendant, or court upon request.

GARNISHEE CALCULATION SHEET FOR EARNINGS

1. The employer's current payday is _____ . The principal defendant's gross earnings from the employer that were earned for this pay period are: \$ _____

2. Deductions required by law to be withheld from gross earnings shown on line 1:
 - a. Federal withholding tax (for income tax) \$ _____
 - b. State withholding tax (for income tax) \$ _____
 - c. Employee portion of social security tax \$ _____
 - d. Employee portion of medicare tax \$ _____
 - e. City withholding tax (for income tax) \$ _____
 - f. Public employee retirement when required by law \$ _____
 - g. Total (add lines 2a through 2f) \$ _____

3. **Disposable earnings** (subtract line 2g from line 1) \$

4. Test I for amount available for garnishment (25% of line 3): (this percentage does not apply to garnishments for support of a person) \$ _____

5. Test II for amount available for garnishment (disposable earnings minus federal minimum wage multiplied by appropriate multiple for normal pay period):
 - a. Locate the appropriate figure from the chart below and insert here \$ _____
 - b. Subtract amount on line 5a from amount on line 3. Insert amount here. If the amount is less than zero, enter -0-. \$ _____

6. Maximum amount subject to garnishment (line 4 or 5b, whichever is less) \$

7. Amounts withheld from disposable earnings (see line 3) pursuant to orders with priority:
 - a. Order of bankruptcy court \$ _____
 - b. Orders for past due federal or state taxes \$ _____
 - c. Income withholding for support of any person \$ _____
 - d. Other general garnishments served prior to this writ \$ _____
 - e. Total of all priority amounts withheld (add lines 7a through 7d) \$

8. Amount subject to garnishment under this writ (subtract line 7e from line 6) \$

9. **Amount to be withheld in response to this writ** (line 8 above or line 2 on the request and writ for garnishment, whichever is less) \$

Chart*	
Test II for Amount Available for Garnishment	Beginning: <u>July 24, 2009</u>
Weekly (or more frequently) pay period	\$217.50
Biweekly pay period	\$435.00
Semimonthly pay period	\$471.25
Monthly pay period	\$942.50
*Training wage: for person aged 16 to 19 on their first job, use 85% of the above figures.	

SCAO MC 48

FINAL STATEMENT

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT	FINAL STATEMENT ON GARNISHMENT OF PERIODIC PAYMENTS	CASE NO.
---	--	-----------------

Court address Court telephone no.

Plaintiff's name and address (judgment creditor)
Plaintiff's attorney, bar no., address, and telephone no.

v

Defendant's name and address (judgment debtor)
Garnishee's name and address

When to complete and file this form:

Within 14 days after the writ ceases to be effective under MCR 3.101(B)(1) or after the garnishee is no longer obligated to make periodic payments, the garnishee shall file with the court and mail or deliver to the plaintiff and the defendant a final statement of the total amount paid on the writ. If the garnishee is the defendant's employer, the statement is to be filed within 14 days after the writ ceases to be effective, regardless of changes in employment status during the time that the writ was in effect.

1. The total amount withheld under this writ is \$ _____ .

Date of statement

Garnishee/Agent/Attorney signature

CERTIFICATE OF MAILING

I certify that on:

_____ I mailed or personally delivered a copy of this final statement with the court.
Date

_____ I mailed or personally delivered a copy of this final statement to the plaintiff/attorney.
Date

_____ I mailed or personally delivered a copy of this final statement to the defendant.
Date

Date

Garnishee/Agent/Attorney signature

SCAO MC 50

GARNISHMENT RELEASE

Approved, SCAO

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT	GARNISHMENT RELEASE	CASE NO.
---	----------------------------	-----------------

Court address

Court telephone no.

Plaintiff's name and address (judgment creditor)

Defendant's name and address (judgment debtor)

v

Plaintiff's attorney, bar no., address, and telephone no.

Garnishee's name and address

Defendant's social security no.

TO THE GARNISHEE:

- 1. The garnishment issued on _____ is withdrawn by the plaintiff.
Date

The withdrawal was authorized on _____ by _____
Date Plaintiff/Attorney Bar no.

- 2. The garnishment issued on _____ is cancelled by the court.
Date
- 3. You are released from further liability in connection with this garnishment.
- 4. Any amounts withheld by the garnishee on or after _____ shall be returned to the defendant
and any further withholdings shall be discontinued. Date

Date

Deputy court clerk

CERTIFICATE OF MAILING

Use note: does not need to be completed if the document is served through MiFILE.

I served a copy of this release on the parties or their attorneys by first-class mail addressed to their last-known addresses as defined by MCR 2.107(C)(3). I declare under the penalties of perjury that this certificate of mailing has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Date

Signature

TO THE PLAINTIFF: The social security number field is blacked out on the court copy for security reasons, but will appear on the garnishee, defendant, and plaintiff copies.

Approved, SCAO

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT	GARNISHMENT RELEASE	CASE NO.
---	----------------------------	-----------------

Court address

Court telephone no.

Plaintiff's name and address (judgment creditor)
Plaintiff's attorney, bar no., address, and telephone no.

v

Defendant's name and address (judgment debtor)
Garnishee's name and address



TO THE GARNISHEE:

- 1. The garnishment issued on _____ is withdrawn by the plaintiff.
Date
 The withdrawal was authorized on _____ by _____
Date Plaintiff/Attorney Bar no.
- 2. The garnishment issued on _____ is cancelled by the court.
Date
- 3. You are released from further liability in connection with this garnishment.
- 4. Any amounts withheld by the garnishee on or after _____ shall be returned to the defendant
 and any further withholdings shall be discontinued. Date

Date

Deputy court clerk

CERTIFICATE OF MAILING

Use note: does not need to be completed if the document is served through MiFILE.

I served a copy of this release on the parties or their attorneys by first-class mail addressed to their last-known addresses as defined by MCR 2.107(C)(3). I declare under the penalties of perjury that this certificate of mailing has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Date

Signature

TO THE PLAINTIFF: The social security number field is blacked out on the court copy for security reasons, but will appear on the garnishee, defendant, and plaintiff copies.